

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Wadsworth, Texas

STP NUCLEAR OPERATING COMPANY, INC.

Employer

and

Case No. 16-RC-10682

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL UNION 66**

Petitioner/Union

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, STP Nuclear Operating Company, Inc., has been a non-profit organization since September 18, 1997. It provides management services for the South Texas Project Electric Generating Station, which is owned by the cities of Austin and San Antonio, Texas, and Texas Genco, which is a private investor firm.

Before the creation of the STP Nuclear Operating Company, the facility was managed by Houston Lighting and Power Co., which partially owned and managed the facility. When Houston Lighting and Power Co. managed the facility, Petitioner, International Brotherhood of Electrical Workers, Local Union 66, became the exclusive bargaining representative of the following unit as expressed in the collective bargaining agreement which was in effect from May 26, 1978 through May 25, 1980:

All of the Company's production, maintenance and operating employees engaged in the Transmission and Distribution Department, the Stores Department, the Energy Production Department and the Special Services Department, but excluding plant protection employees, supervisors as

defined in the Act, professional employees (including nurses), office and clerical employees, janitors and meter readers.

Petitioner and Employer entered into a collective bargaining agreement which had a term of October 1, 1998 through July 31, 2001 that changed the recognition language. Subsequent collective bargaining agreements, including the current collective bargaining agreement, which has a term of August 2, 2004 through July 31, 2006, contain the following recognition language:

The Company recognizes the Union as the exclusive representative of all the Company's employees who are working in classifications listed in Article 10, Wage Scale and Classification.

Article 10, Wage Scale and Classification lists the following employee classifications: head electrician, electrician, apprentice electrician, head mechanic, mechanic, apprentice mechanic, instrument and control master technician, apprentice instrument and control technician, head material handler, material handler, apprentice material handler trainee, head operator, operator, operator trainee and helper.

On July 27, 2005, Petitioner filed a petition under Section 9(a) of the National Labor Relations Act seeking to represent a unit of the maintenance planners currently employed by the Employer. Petitioner's proposed unit consists of approximately 28 maintenance planners who are generally known as mechanical planners, electrical planners and instrument and control (I&C) planners. Petitioner seeks to exclude all other employees, guards and supervisors as defined in the National Labor Relations Act as amended. Specifically, Petitioner seeks a self-determination election pursuant to the Board's decisions in *Armour & Co.*, 40 NLRB 1333 (1942) and *Globe Machine &*

Stamping Co., 3 NLRB 294 (1937). Petitioner stated it will proceed to an election in any unit I find appropriate.

The Employer, on the other hand, contends that the petitioned-for unit is not appropriate and, therefore, the Petition should be dismissed. Alternatively, the Employer argues that the only appropriate unit consists of all of the Employer's planners and schedulers.

The Employer also argues that because of an upcoming outage at the facility, it would not be feasible to conduct an election between the dates of September 15, 2005 through November 1, 2005.

On August 9, 2005, a hearing officer of the National Labor Relations Board conducted a hearing and both parties filed briefs with me.

1. ISSUES

As referenced above, there are several issues raised in this matter. The main issue is whether the petitioned-for unit constitutes an appropriate unit and whether a self-determination election should be held in accordance with the Board's decisions in *Armour* and *Globe*.

Other related issues are whether the petition should be dismissed because the unit Petitioner seeks is inappropriate, whether an election should be held for the unit the Employer deems as appropriate, and whether the Employer's scheduled outage should impact the election date.

2. DETERMINATION

I have considered the evidence and arguments presented by both parties. As discussed below, I find that the petitioned-for unit is not an appropriate unit because it

does not include all of the Employer's planners. In addition, I find that the Employer's planners share a sufficient community of interest with the current bargaining unit employees such that a self-determination election must be held to discern whether these employees wish to be represented by the Petitioner in the existing bargaining unit. I find that the schedulers should be excluded because they do not share a sufficient community of interest with the planners and with the existing bargaining unit. Because the Petitioner is willing to proceed to an election for any unit I deem appropriate, I will not dismiss the petition.

I also find that that the approaching outage is not an impediment to an election and that an election be held in a manner specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

3. FACTS

A. COMPOSITION OF THE CURRENT BARGAINING UNIT

Petitioner currently represents approximately two hundred and ninety-four of the Employer's employees. About half of the current bargaining unit employees work in the operations department and operate the two nuclear reactors and the plant. About half of the current bargaining unit employees work in the maintenance area. Approximately twenty of the current bargaining unit employees work in the warehouse.

B. EMPLOYER'S MANAGERIAL STRUCTURE

The Employer's President and Chief Executive Office is James Sheppard. The Employer's Vice President of Generation and Plant General Manager Gary Parkey, Vice President of Oversight Edward Halpin, Vice President of Engineering Thomas Jordan, Manager of Generation Financial Support Frank Mallen, Manager Generation Station

Support Michael Meier, Manager of Industry Alliances John Lovell and Secretary Executive Shanda Maxey report directly to Sheppard.

There are eight managers who report directly to Generation and Plant General Manager Parkey, which include Manager of Outage and Work Control John Crenshaw and Operations Manager Charles Bowman.

Manager of Work Control Jesse Wells, Supervisor of Outage Management Clifford Buede, Field Installation Supervisor Joe Hartley, Field Engineering Supervisor Norman Mayer and Safety Supervisor John Castaneda report directly to Crenshaw. Unit 1 Operations Manager James Mertink, Unit 2 Operations Manager Jay Phelps and Manager Deborah Towler directly report to Bowman.

The current bargaining unit operations department employees are supervised by shift supervisors who report to Mertink, Phelps or Towler. The Employer's maintenance department employs the bargaining unit mechanics, electricians, I&C technicians and valve crew employees. They are supervised by shift supervisors who report to I&C Manager Jeff Lovejoy, Electrical Maintenance Manager Rudy Stastny, Manager Keith Bowles, Valve Crew General Manager Craig Murry and Maintenance Mechanical Manager Steve Blossom. The bargaining unit employees employed in the warehouse work under Financial Support Manager Frank Mallen.

Jesse Wells is the Work Control Manager. Scheduling Supervisor Grant Peters, Mechanical Maintenance Planning Supervisor Bill Taylor, I&E (Instrument and Control and Electrical) Planning Supervisor Lynn Davidson¹, Database Management Supervisor

¹ The I&C and Electrical planners are being supervised on an interim basis by Jerry Coates, while Davidson is on special assignment.

Darrel Barr and Welding and Support Planning Supervisor Ken Silverthorne and Royce Brown who supervises Work Week Coordination, all report directly to Wells.

The eight mechanical planners who are in the petitioned-for unit are supervised by Mechanical Maintenance Planning Supervisor Taylor and the approximately 16 electrical and instrument and control planners are supervised by interim supervisor Jerry Coates.

The Employer's four welding and support planners are directly supervised by Welding and Support Planning Supervisor Kenneth Silverthorne and its three project planners (two of whom are engineering specialists and one is the material coordinator) are directly supervised by Supervisor Norm Mayer, who reports directly to Work Management Manager Crenshaw.

The Employer's 12 schedulers (who have the job titles as planner/scheduler and scheduler outage) are directly supervised by Supervisor Grant Peters and its two engineering and support schedulers (who have the job titles of planner/scheduler and scheduling program analyst) are directly supervised by Supervisor Darrel Barr.

C. OVERVIEW OF THE WORK PROCESS OF THE PLANNERS AND SCHEDULERS

The work process of the planners (who have the official job title of work control specialists) and schedulers begins with the generation of a work request, which is directed to the workweek coordination individual or screener. The screener assigns the work to the mechanical maintenance, instrument and control maintenance, electrical maintenance or support services and welding, etc. departments. After the work request arrives at a certain department, the supervisor will evaluate the request and decide which planner should be assigned to prepare the work package. At that time, the planner starts preparing the work package. While this action is occurring, schedulers work to place the

activity in the correct workweek and consult with the planning supervisor. The scheduler then works with the workweek coordinator to plan the schedule. At this point, the workweek coordinator assumes responsibility for the activity and facilitates the work done by the field bargaining unit employees.

D. JOB DUTIES OF THE EMPLOYER'S PLANNERS AND SCHEDULERS

1. Job Duties of the Planners in the Petitioned-for Unit

As referenced above, the Employer's eight mechanical planners report to William Taylor, who is the mechanical planning supervisor. The Employer's sixteen electrical and I&C planners are currently supervised by interim supervisor Jerry Coates.

a. Job Description

The summary of the job description for the Employer's mechanical, electrical and I&C planners reads as follows:

Provides support to Planning Section, Work Control Department. Plans and processes work packages for the performance of corrective and preventative maintenance activities by discipline. Ensures work packages are ready to work prior to the scheduled start dates. Interfaces with applicable support organizations to resolve restraints.

b. Creation of Work Packages

The mechanical, electrical and I&C planners perform similar functions on a daily basis. They begin their workday by accessing their computers to check emails or to generate a work assignment report, which specifies the job assignments and scheduled start date for the assignment. The deadlines under which the job packages must be performed also appear on the initial computer printout.

After the mechanical, electrical and I&C planners obtain the work assignments from the computer, they review the assigned tasks and begin to assemble necessary data

to complete the task. They prioritize the tasks and determine if they drafted a work package for the same or a similar task and, if so, which bargaining unit employee previously performed the task. They gather information pertaining to the work assignment, such as drawings and vendor information, and visit the site where the work will be performed (sometimes they are accompanied by a bargaining unit employee) or they will ask a bargaining unit employee to review the site and to report back what they learned.

After the mechanical, electrical and I&C planners visit the worksite or receive the bargaining unit employee's report, they consult with the bargaining unit employee or the bargaining unit employee's supervisor. During this consultation, they discuss the drawings, vendor information, and whatever information the bargaining unit employee will need to complete the job. They will also discuss any issues concerning various matters such as available access or if scaffolding is needed or if there is a problem with insulation. If these issues are present, the welding and support planners (who are supervised by Kenneth Silverthorne) prepare the work package needed to correct the problem and provide all necessary permits. The welding and support work packages and permits are then included in the mechanic, electrical and I&C planners' work packages.

After this consultation, the planners begin to assemble the work package on their computers. They enter the notes from their consultations with the bargaining unit employee or supervisor into the computer. They list all necessary parts and permits and print out a list of all necessary work documents to be included in the work package. They also create the work instructions for the bargaining unit employees.

The final work packages are then assigned to a bargaining unit employee and are signed off on when completed.

2. *Job Duties of the Employer's Welding and Support Planners and Project Planners*

a. *Welding and Support Planners*

The welding and support planners share the same summary job description as those in the petitioned-for unit and are supervised by Kenneth Silverthorne. They perform welding and support planning and prepare entire work packages for work to be performed by carpenters, pipe fitters and insulators (who are not part of the existing bargaining unit.) They provide support services and prepare the permits needed for work packages for the mechanical, electrical and I&C planners. As referenced above, the work permits are incorporated in the work packages prepared by the mechanical, electrical and I&C planners and these work packages are completed by the bargaining unit employees.

b. *Project Planners*

As referenced above, the project planners are supervised by Norm Mayer, who is in charge of field engineering and outage projects. These planners prepare work packages for more complex jobs, specifically for large maintenance activities, modification activities and work packages for contractors. They prepare the entire work packages, which incorporate the work packages prepared by the mechanical, electrical and I&C planners and permits prepared by the welding and support planners. The work packages they prepare are used by contractors.

The summary of the job description for the project planners reads as follows:

Develop work packages, constructability reviews, material requirements, scope evaluations, project documentation necessary for the installation, testing and closure of Plant Modifications. Responsible for Field

Engineering services provided to Station Maintenance and Contractor/Specialty Vendor Groups engaged for at power and outage activities or major modifications.

The project planners include the materials coordinator whose job description also reads: “Responsible for coordination and control of programs and materials to support the Outage Support Department.” In particular, the material coordinator plans activities, performs some planning, and assists the engineering staff specialists by providing them with sourcing material.

The project planners do not prepare work packages specifically for the bargaining unit employees, but have significant interaction with the other planners. When modifications are required, the engineering specialist will develop the additional work instructions and would require additional support from the electrical maintenance or I&C maintenance. In addition, the project planners may require support from the welding and support planners for such matters as scaffolding, insulation or trench digging.

The educational requirements for the project planners are somewhat different than those required by the other planners. Project planners are expected to have a background in mathematics, physical science or engineering.

3. *Job Duties of Schedulers*

The schedulers who are supervised by Peters have the job titles of planner/scheduler and scheduler outage. The summary of the planner/schedulers job description reads:

Develop, update and maintain schedules for Plant Modification Design & Implementation, Plant Departmental Work Plans and Long Range Plans in accordance with the STP business plan.

The summary of the scheduler outage job description reads:

Support the outage team in developing work scope reports, critical path method (CPM) work logic activity sequencing and updating/monitoring plant integrated outage plans to assure execution in a safe and cost efficient manner. Responsible for interfacing with site organizations and contractors to identify critical path activities to be performed, the logic in which they are to be accomplished, development of duration's/resources [sic] for activity performance, schedule analysis reports and historical lessons learned documentation.

Database Manager Darrel Barr supervises a planner/scheduler whose job description is identical to those of the planners/schedulers who are supervised by Peters and a scheduling program analyst, whose job description reads: "Responsible for the development, implementation and modification of department computer applications." In addition, the scheduling program analyst is responsible for maintaining the software used by the planners/schedulers to perform their work.

The planners/schedulers who work for Peters do not prepare work packages. Rather, their job duties are to organize the work and set a deadline for the work. They do not tell the planners or bargaining unit employees how to perform the work, although one scheduler prepares surveillance testing² work packages for use by the maintenance employees.

The schedulers use two computer programs when performing their work. One is the Work Management System, which the planners also use. They also use a computer program that is used for scheduling only. The planners do not have scheduling responsibilities and do not use the schedulers's computer program.

² Surveillance testing is a test to verify a component's viability.

4. *Physical Location of the Petitioned-For Planners and Schedulers*

The planners and schedulers are located on the second floor of the Employer's facility. The planners work in three sections of cubicles that are located in the middle of a room on the second floor of the facility. The planning supervisors are located in offices in front of the planners' cubicles. Although the schedulers work on the same floor, they work behind a partition about 50 feet away from the planners.

5. *Interaction Between Petitioned-For Planners, the Remaining Planners and Schedulers*

Although the petitioned-for planners work on the same floor as the schedulers, the record does not establish that they have daily interaction with the schedulers. Whatever interaction occurs is primarily by electronic means and is largely comprised of the schedulers providing the planners with the required deadlines. Although there is some evidence that the nature of the schedulers' interaction with the planners generally concerns the scope of the job, the number of work hours needed to perform the work, the craft assigned to perform the work, if additional support is needed and job duration, the record shows very limited interaction between the schedulers and the planners. This limited interaction occurs in instances such as when a deadline will be missed because of unavailable parts or a design change package, the planner will notify the scheduler by placing a sticky note on the schedulers' computer or by phone.

Much of the interaction between the schedulers and the planners is between their respective supervisors. Indeed, the record reflects that interaction is somewhat discouraged as the I&C supervisor instructed an I&C planner not to contact the schedulers, but to refer any questions to him and he would contact the schedulers.

The program analyst's interaction with the planners is generally limited to her troubleshooting of the Work Management System computer program.

The record establishes that the schedulers have interaction with the bargaining unit supervision, but not with the bargaining unit employees.

E. TERMS AND CONDITIONS OF EMPLOYMENT

1. Current Bargaining Unit Employees

The current bargaining unit employees are paid on a bi-weekly basis under a separate payroll system. They work in the shop area of the maintenance facility. They wear uniforms and receive a uniform allowance because they work in a hot and dirty environment and their uniforms may become damaged because of the nature of their work. They receive an overtime meal allowance, which is paid on a projected basis at year's end. They receive a flat-rate incentive plan, which is not dependent upon their individual performance. For work-related travel, they receive per diem and reimbursement for mileage from the worksite to the off-site location and back to the worksite. The bargaining unit employees also receive shift differential pay, longevity pay, call-out pay as well as overtime pay at time and one-half.

Most of the current bargaining unit maintenance employees work on the first floor of the maintenance operations facility, which consists of three different shops: the electrical shop, the I&C shop and the mechanical maintenance shop (or machine shop).

The operations bargaining unit employees work in the generating unit.

2. Planners and Schedulers

The planners and schedulers are salaried employees. They are exempt from the overtime provisions of the FSLA, but receive overtime pay once they work ten hours of

overtime. They are paid on the 1st and 16th of each month. Most of them work on the second floor of the maintenance operations facility at the south end of the building. A few work in a different area. They do not wear uniforms and receive an unpaid lunch period, which the employee may take at his or her discretion.

The planners and schedulers participate in an incentive compensation program, with an annual incentive payout which is based on the performance of the station and on their own individual performance. They are covered by different travel policies than bargaining unit employees, are reimbursed for travel “at cost” and they are reimbursed for mileage from home to location and back.

F. OUTAGE ACTIVITIES

An outage is scheduled from October 1, 2005 through November 1, 2005. During an outage, the plant undergoes a “major evolution”. The plant is shut down and the nuclear reactor head is removed. The reactor is fueled with new fuel and the spent nuclear fuel is transported to a spent fuel area. Major maintenance that cannot be performed when the reactor is operating will be performed during the outage. After the maintenance is completed, the reactor will be reassembled.

Preparation for an outage takes months. Most of the Employer’s departments begin to be directly affected about 30 days before the outage. During this 30-day period, the Employer will hire about 1,000 auxiliary workers to assist in the maintenance activities.

On September 15, 2005, the entire refueling team will go off site to begin the detailed review of refueling activities. Most of the Employer’s regular employees will perform jobs that are not their everyday duties, will work rotating schedules (including a

night schedule) and will work many overtime hours. Some employees, however, will work their regular schedules.

The Employer argues that it is not possible to hold an election from Sept. 15 through Nov. 1, when refueling is completed.

4. ANALYSIS

Petitioner seeks to represent the electrical, mechanical and I&C planners. The Employer, on the other hand, takes the position that the petitioned-for unit is inappropriate and that the only appropriate unit would consist of all of the Employer's planners and schedulers.

Contrary to the both the Petitioner and Employer's assertions, I find that the only appropriate unit is a unit comprised of all of the Employer's planners.

A. *Applicable Board Law*

It is well settled that in cases concerning a question of representation the unit sought by Petitioner must be an appropriate unit, regardless of whether a broader unit is also appropriate. *Century Moving and Storage*, 251 NLRB 671, 679 (1980), citing *Pilot Freight Carriers, Inc.*, 223 NLRB 286 (1976). When determining whether a petitioned-for unit is appropriate, the Board considers whether the employees in the unit have a sufficient "community of interest". Factors to be considered in making such a determination include: (1) degree of functional integration; (2) common supervision; (3) nature of employee skill and function; (4) interchangeability and contact among employees; (5) work situs; (6) general working conditions; and (7) fringe benefits. *Swift & Co.*, 129 NLRB 1391 (1961); *United States Steel Corp.*, 192 NLRB 58 (1971). However, the Board has also determined that a "residual unit is appropriate only if it

includes all unrepresented employees of the type covered by the petition.” *Fleming Foods, Inc.*, 313 NLRB 948, 950, (1994).

When determining whether a petitioned-for unit is appropriate, the Board first examines the petitioned-for unit and if that unit is appropriate, the inquiry ends. If the petitioned-for unit is inappropriate, then the Board may examine the alternative units suggested by the parties. *Overnite Transportation Co.*, 331 NLRB 662 (2000). When addressing the question of whether a petitioned-for unit is appropriate, the Board has found the petitioner’s request to be a relevant consideration. *Marx Oxygen Company of Alabama*, 147 NLRB 228 (1964). It should be noted that the Board has a long-standing policy of not compelling unions to seek to represent the “most comprehensive grouping.” *MC-HOR-HAN Trucking Co., Inc.*, 166 NLRB 700 (1967).

In addition, the Board will find a self-determination election to be inappropriate unless the proposed bargaining unit has a community of interests with the existing bargaining unit. *Ideal Super Markets*, 171 NLRB 1 (1968).

B. The Appropriate Bargaining Unit

The petitioned-for unit is not appropriate because it excludes the welding and support planners and the project planners who are employees of the same type as requested by the petition. I have determined that the appropriate unit would include all of the Employer’s planners and that such a unit shares a sufficient community of interest with each other and with the current bargaining unit.

All of the Employer’s planners have similar job descriptions and are officially referred to as Work Control Specialists. The mechanical, electrical and I&C planners perform the same tasks in that they develop work packages for the bargaining unit

employees. They perform these tasks in a similar manner in that they use a computer, locate vendor information and drawings and investigate to see if the same task or a similar task was performed in the past and work in the area of the Employer's facility. The electrical, mechanical and I&C planners consult with bargaining unit employees and bargaining unit supervision to get feedback and suggestions for the best way to solve an issue. They also visit the equipment as part of formulating the work package.

The welding and support planners perform similar work as the mechanical, electrical and I&C planners because they prepare work packages for the building trades and prepare necessary permits that the mechanical, electrical and I&C planners use in their work packages.

The project planners use the work packages prepared by the mechanical, electrical, I&C and welding and support planners when developing their work packages.

All of the planners are paid on the same basis and are treated as non-exempt for purposes of calculating overtime and receive overtime pay only when they work more than 10 hours of overtime. They are subject to the same working conditions and receive the same benefits, including compensation for business-related travel.

The career path of the planners shows significant interchange between the different groups of planners and between the bargaining unit employees. For instance, the mechanical planning supervisor previously worked as a mechanical planner and before that, he worked as a field engineering planner. One field engineer came from the mechanical planning group and one electrical planner previously worked as an I&C planner. Mechanical planners tend to have mechanical experience. I&C planners have been promoted from the electrical shop and an electrical planner was promoted from the

I&C shop. The I&C acting supervisor began his career as an I&C technician, was promoted to a maintenance planner position and then became an I&C planner. The record shows that the Employer prefers its planners to have journeyman experience. For these reasons, I find the planners share a sufficient community of interest such that they should be included in the appropriate unit.

The schedulers, on the other hand, do not share a sufficient community of interest to mandate their inclusion in the bargaining unit. The schedulers plan the work, insofar as they inform employees that a job needs to be performed and when it needs to be done, but they do not prepare work packages. Most schedulers have not been promoted from the bargaining unit and do not have experience as planners. They tend to be hired from other scheduling areas or other nuclear plants or from supervision.

Conversely, the planners inform bargaining unit employees how to perform their work, which is a task that the schedulers do not perform, and do not perform any scheduling duties. Even though the schedulers and planners use computers when working, the schedulers use an additional computer program that the planners do not use. Even though the schedulers work in close proximity to the planners and are subject to similar job benefits and pay, they do not share a sufficient community of interest with the planners to mandate their inclusion in an appropriate bargaining unit because they lack interchange with the planners and with the bargaining unit employees, do not prepare work packages, and their work is limited to scheduling events, which is a function neither the planners nor the bargaining unit employees perform.

The planners share a sufficient community of interest with the bargaining unit employees. The planners possess a high degree of functional integration with the

bargaining unit employees because the work packages prepared by the mechanical, electrical and I&C planners are used by the bargaining unit employees who perform the work. The welding and support planners facilitate the work performed by the bargaining unit employees by providing necessary permits which are incorporated in the work packages prepared by the mechanical, electrical and I&C planners. The project planners also possess functional integration with the other planners and the bargaining unit employees in that they prepare the large-scale work packages which include the work packages prepared by the other planners and are then given to the bargaining unit employees for completion.

The bargaining unit employees and the mechanical, I&C and electrical planners have a high level of interaction and contact. The mechanical, electrical and I&C planners consult with the bargaining unit employees and the bargaining unit supervisors during the development of the work packages. The bargaining unit employees ask the mechanical, electrical and I&C planners questions about how to perform the work and the planners ask the bargaining unit employees for suggestions when they are preparing the work packages. The mechanical, electrical and I&C planners have daily interaction with the bargaining unit employees. The welding and support planners provide the permits and prepare the work packages for work performed by the building trades which is integrated with the work performed by the bargaining unit employees. Similarly, work of the project planners is integrated with that of the other planners as they prepare work packages for large projects and incorporate the work of the other planners in their work.

The planners and the bargaining unit employees also share similar skills and

qualifications and the Employer prefers its planners to have journeyman craft background.

C. Employer's Position

The Employer argues that the petitioned-for unit is inappropriate for numerous reasons. First, the Employer asserts that the appropriate unit would include all of the planners and schedulers, not just the electrical, mechanical and I&C planners. As referenced above, I reject the Employer's assertion and find that a unit comprised of all of the Employer's planners is an appropriate unit.

The Employer urges that the appropriate bargaining unit must include its schedulers because the schedulers plan when the work package activities will be performed. Moreover, the Employer asserts that the schedulers' work is functionally integrated with that of the planners in that they plan and schedule engineering activities to support the planners' work packages and for maintaining the software the planners use to perform their work. The Employer also points to its managerial structure as support for its argument and maintains that all of the planners and schedulers share the same senior supervisor, Crenshaw, and all of them (except the planners who work for Mayer) share the same direct supervisor, Wells.

In addition, the Employer argues that the planners and schedulers have different working conditions than those in the bargaining unit in that the planners and schedulers are exempt employees, do not wear uniforms, have a discretionary lunch period, receive incentive pay based partly on their individual performance, receive limited overtime and work in close proximity to each other. The Employer also points out that the planners

have their cubicles on the second floor of the facility and use office equipment, while the bargaining unit employees work on the first floor and use industrial equipment.

I do not find the Employer's arguments to be persuasive. As referenced above, the schedulers do not have the same level of functional integration as the planners have with each other and with the bargaining unit employees. The schedulers lack significant interchange with the planners and the bargaining unit employees and use a different computer program when performing their work. The schedulers enjoy a different career path in that they tend to have previous work experience as schedulers, while the planners tend to have experience as bargaining unit employees or as planners in another discipline. For these reasons, the schedulers do not share a community of interest with the planners such that they must be included in the bargaining unit.

As referenced above, the Employer attacks the petitioned-for unit as inappropriate. Although I have determined that the petitioned-for unit is inappropriate and the appropriate unit is comprised of all the Employer's planners, I will briefly address the remaining arguments submitted by the Employer.

The Employer argues that the petitioned-for unit is inappropriate because there has not been a history of union membership in the petitioned-for unit. I do not find this argument particularly persuasive because the Employer has had a significant bargaining relationship with the bargaining unit employees, even though the planners have not been part of a bargaining unit.

Furthermore, the Employer maintains that the petitioned-for unit is inappropriate because the bargaining unit employees who run the generators and equipment and the petitioned-for planners use computers in their work. Although as a general rule, the

Board will not include technical personnel in a union with office clericals, the record establishes that the petitioned-for planners are not traditional office workers and rely on their technical expertise in performing their duties. Therefore, I will not exclude the mechanical, electrical and I&C planners on that basis.

As another ground for finding the petitioned-for unit as inappropriate, the Employer points out that the employees in the petitioned-for unit have different compensation and wear different clothing to work. However, given the strong functional integration of the work performed by the current bargaining unit and the petitioned-for planners, I do not find these differences to mandate the exclusion of the mechanical, electrical and I&C planners.

As referenced above, the Petitioner is not required to petition for the most comprehensive unit, unless an appropriate unit compatible with the requested unit does not exist. *Overnite Transportation Co.*, 322 NLRB 723 (1996). I am satisfied that a bargaining unit of all of the Employer's planners shares a sufficient community of interest and it is appropriate to hold a self-determination election to discern whether they wish to be represented by Petitioner in the existing bargaining unit. In sum, the employees in the unit I find appropriate share a community of interest in that they possess functional integration, interchange and similar job duties with each other and with the existing bargaining unit.

Finally, the Employer argues that an outage creates much disruption and raises safety concerns and, as a result, the election cannot be held from September 15 through November 1, 2005. I reject this argument and find no reason why employees could not vote in an election held during the outage.

Therefore, I direct an election be conducted pursuant to *Armour* and *Globe, supra* to determine whether the employees in the unit found appropriate wish to be included in the existing bargaining unit or whether they wish to remain unrepresented.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the above referenced discussion, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. I find that the Employer is a non-profit corporation, which is owned by the Cities of Austin and San Antonio, Texas and Texas Genco, which is a private investment firm and is engaged in the business of electrical generation. During the preceding twelve months the Employer has purchased and received materials, goods and services valued in excess of \$250,000 directly from points outside the State of Texas. I also find that, notwithstanding the Employer's partial ownership by two municipalities, the Employer's employees are not city employees and are paid directly by the Employer. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the Petitioner's labor organization status.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All maintenance planners including all mechanical, electrical and instrument and control planners, all welding and support planners and all project planners.

EXCLUDED: All other employees, including all planners/schedulers, scheduler outage, scheduling program analysts, supervisors, and guards as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be included in the existing bargaining unit currently represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local Union 66, or whether they wish to remain unrepresented.

The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as

strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be

alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Mickey Leland Federal Building, 1919 Smith Street, Suite 1545, Houston, Texas 77002 on or before **September 1, 2005**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on the failing to post the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **September 8, 2005**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance may also be found under "E-Gov" on the National Labor Relations Board's website: www.nlr.gov.

Dated: **August 25, 2005**

/s/ **Timothy L. Watson**
Timothy L. Watson, Acting Regional Director
National Labor Relations Board
Region 16
819 Taylor Street - Room 8A24
Fort Worth, TX 76102